

TENNESSEE REGULATORY AUTHORITY

Sara Kyle, Chairman
Lynn Greer, Director
Melvin Malone, Director



460 James Robertson Parkway
Nashville, Tennessee 37243-0505

MEMORANDUM

TO: Chairman Sara Kyle
Director Lynn Greer
Director Melvin Malone

FROM: Eddie Roberson, Chief, Consumer Services Division
Ed Mimms, Manager, Do Not Call Program
Lynn Questell, Counsel

DATE: May 10, 2002

SUBJECT: Settlement with Adventis Inc., d/b/a The Big Lot!
(Docket No. 02-00485)

Attached is a Settlement Agreement between the Consumer Services Division ("Staff") and Adventis Inc. for alleged violations of the Tennessee Do-Not-Call Telephone Sales Solicitation statute, TCA § 65-4-401 *et seq.* Adventis registered with the Authority's Do Not Call Program on April 15, 2002.

Three (3) separate complaints have been registered against Adventis, Inc. with the Authority alleging that the company violated TCA § 65-4-401 *et seq.* Adventis, Inc. was not registered with the Authority at the time of the alleged violations of TCA § 65-4-401 *et seq.* The Authority has not received any additional Do Not Call complaints against Adventis, Inc. since April 2, 2002. This Settlement requires the Company to make a payment of \$5,000 to the Authority along with assurances from the Company that it will fully comply with applicable state law. The terms of this Settlement require Adventis, Inc. to pay \$2,000 to the Authority no later than thirty (30) days from the date the Authority ratifies the Settlement with the remaining balance to be paid in three (3) equal installments no later than the first business day of each month for the next three (3) months. A representative of Adventis, Inc. will be available telephonically for the May 21, 2002 Conference to answer any question you may have.

Considering all relevant facts including the Company's size, financial status, good faith response to the Authority's investigation and the gravity of the violations, the Staff believes the terms of this Settlement are fair and reasonable and should have the result of no additional telemarketing complaints being filed against Adventis, Inc.

Staff submits the attached Settlement Agreement for your deliberation at the May 21, 2002 Authority Conference.

cc: David Waddell, Executive Secretary
Richard Collier, General Counsel
Roland Pieterman, Counsel for Adventis, Inc.

Telephone (615) 741-2904, Toll-Free 1-800-342-8359, Facsimile (615) 741-8953
www.state.tn.us/tra

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

IN RE:)		
)		
ALLEGED VIOLATIONS OF TENN.)		
CODE ANN. §65-4-401 <i>et seq.</i> , DO-NOT-)		
CALL SALES SOLICITATION LAW,)	DOCKET NO.	02-00485
AND RULES OF TENNESSEE)		
REGULATORY AUTHORITY, CHAPTER)		
1220-4-11, BY:)	DO-NOT-CALL	T02-00196
)	PROGRAM	T02-00198
ADVENTIS, INC., D/B/A INDEPENDENT)	FILE NUMBERS	T02-00220
SYSTEMS D/B/A/ THE BIG LOT!)		
)		

SETTLEMENT AGREEMENT

This Settlement Agreement has been entered into between the Consumer Services Division ("CSD") of the Tennessee Regulatory Authority ("TRA") and Adventis, Inc. d/b/a Independent Systems d/b/a The Big Lot! ("Adventis" or the "Company"). This Settlement Agreement pertains to three (3) complaints received by the CSD alleging that Adventis violated the Tennessee Do-Not-Call Telephone Sales Solicitation law and its concomitant regulations, TENN. CODE ANN. § 65-4-401, *et seq.*, and TENN. COMP. R. & REGS. 1220-4-11.07, and is subject to the approval of the Directors of the TRA.

TENN. CODE ANN. § 65-4-404, and TENN. COMP. R. & REGS. 1220-4-11.07(1), prohibit persons from knowingly making or causing to be made telephone sales solicitation calls to residential subscribers in this state who have given timely and proper notice to the

TRA of their objection to receiving telephone solicitations. Tenn. Code Ann. § 65-4-405(d) requires that persons or entities desiring to make telephone solicitations to residential subscribers shall pay an annual registration fee and obtain the Do-Not-Call Register prior to conducting such telephone solicitations. Tenn. Comp. R. & Reg. 1220-4-11-.04(4) provides that the annual fee to register in the Do-Not-Call Program shall be paid by May 1st of each year and "shall cover the time period from the following July 1st through June 30th of the following years or any part thereof."

Adventis registered in the Tennessee Do-Not-Call Program as a telephone solicitor on February 7, 2001.¹ On two (2) separate occasions between April and July 2001, the CSD provided Adventis with written notice via email regarding the expiration of its registration in the Do-Not-Call Program on June 30, 2001. Adventis did not re-register in the Do-Not-Call Program in 2001.

The CSD's investigation in this docket commenced after it received a complaint on March 27, 2002, alleging that the complainant, a person properly listed on the Do-Not-Call register, received a telephone solicitation from Independent Systems on March 19, 2002. The CSD provided Adventis with notice of this complaint on April 2, 2002. The CSD received a second complaint on April 3, 2002, alleging that a person acting on behalf of Independent Systems made an unlawful telephone solicitation to a person properly listed on the Do-Not-Call register on March 26, 2002. The CSD provided Adventis with notice of this complaint on April 4, 2002. The CSD received the third complaint on April 11,

¹ Adventis registered in the Do-Not-Call Program under the name of Independent Systems, LLC.

2002, alleging that a person acting on behalf of Independent Systems made an unlawful telephone solicitation to a person properly listed on the Do-Not-Call register on March 29, 2002. The CSD provided Adventis with notice of this complaint on April 15, 2002.²

TENN. CODE ANN. § 65-4-405(f) authorizes the TRA to assess penalties for violations of the Tennessee Do-Not-Call statutes, including the issuance of a cease and desist order and the imposition of a civil penalty of up to a maximum of two thousand dollars (\$2,000) for each knowing violation. The maximum fine faced by Adventis in this proceeding is eight thousand dollars (\$8,000), arising from the three (3) telephone solicitations and the Company's failure to re-register in the Do-Not-Call Program.

In negotiating this Settlement Agreement, CSD relied upon the factors stated in TENN. CODE ANN. § 65-4-116(b), including the Company's size, financial status, good faith, and the gravity of the violations. Adventis is in the business of advertising property, including pre-owned vehicles, over the Internet. Adventis is located in Roanoke, Virginia and has no satellite offices. It employs less than twenty (20) workers. After receiving notice of the complaints, Adventis immediately contacted the CSD and expressed an interest in resolving this matter. In addition, Adventis re-registered with the TRA as a telephone solicitor on April 15, 2002 and has paid its registration fees through June 30, 2003. CSD has received no additional complaints from Tennessee consumers arising since Adventis received notice of the violations on April 2, 2002.

² All three (3) of the alleged violations occurred before the CSD sent Adventis the first Notice of Violation in this docket on April 2, 2002.

In an effort to resolve these complaints, represented by the file numbers above, CSD and Adventis agree to settle this matter based upon the following acknowledgements and terms, subject to approval by the Directors of the TRA:

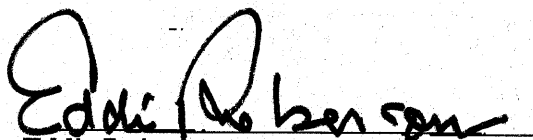
1. Adventis neither admits nor denies that the three (3) complaints against it are true and valid complaints and that it acted in violation of TENN. CODE ANN. §65-4-404 and TENN. COMP. R. & REGS. 1220-4-11.07(1).
2. Since receiving notice of the complaints that are the subject of this Agreement, Adventis has made efforts to come into compliance with TENN. CODE ANN. § 65-4-404 and TENN. COMP. R. & REGS. 1220-4-11.07(1). Adventis contacted CSD and expressed an interest in resolving this matter. In addition, Adventis re-registered with the TRA as a telephone solicitor on April 15, 2002, has paid its registration fees through June 30, 2003 and receives a monthly copy of the Do-Not-Call register.
3. Adventis agrees to pay five thousand dollars (\$5,000.00) in settlement of these complaints and agrees to remit the amount of two thousand dollars (\$2,000.00) to the Office of the Executive Secretary of the TRA no later than thirty (30) days from the date the Directors of the TRA approve this Settlement Agreement.³ The remaining three (3) installments of one (1) thousand dollars (\$1,000.00) each shall be remitted to the TRA no later than the first business day of each month for the next three (3) consecutive months. Upon payment of the amount of five thousand dollars (\$5,000.00)

³ The payment may be made in the form of a check, payable to the Tennessee Regulatory Authority, sent to 460 James Robertson Parkway, Nashville TN 37243, referencing TRA Docket No. 02-00485.

in compliance with the terms and conditions of this Settlement Agreement, Adventis is excused from further proceedings in this matter.

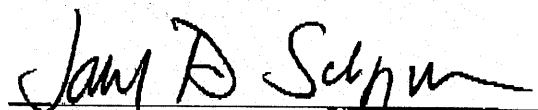
4. Adventis agrees to comply with all provisions of the Tennessee Do-Not-Call Telephone Sales Solicitation law and regulations.
5. If any clause, provision or section of this Settlement Agreement is, for any reason, held to be illegal, invalid or unenforceable, such illegality, invalidity or unenforceability shall not affect any other clause provision or section of this Settlement Agreement and this Settlement Agreement shall be construed and enforced as if such illegal, invalid or unenforceable clause, section or other provision had not been contained herein.
6. This Settlement Agreement represents the entire agreement between the parties, and there are no representations, agreements, arrangements or understandings, oral or written, between the parties relating to the subject matter of this Settlement Agreement which are not fully expressed herein or attached hereto.
7. Adventis agrees that a company representative will participate telephonically in the Authority Conference during which the Directors consider this Settlement Agreement.

8. In the event that Adventis fails to comply with the terms and conditions of this Settlement Agreement, the Authority reserves the right to re-open this docket. Adventis shall pay any and all costs incurred in enforcing the Settlement Agreement.



Eddie Roberson
Chief, Consumer Services Division
Tennessee Regulatory Authority

5/10/02
Date



Signature

JASON SELIGMAN
Print Name

CFO
Print Title

5/10/02
Date